Annual Reports 1984

Health Disciplines Board

Denture Therapists Appeal Board

Ministry of Health
Ontario

Ontario

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Magasinons à la canadienne

Health Disciplines Board
Conseil des disciplines sanitaires

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April 19, 1985

The Honourable Alan W. Pope, Q.C.
Minister of Health

Dear Minister:

I am pleased to submit the Ninth Annual Report of the Health Disciplines Board, for the period ending December 31, 1984. I trust that it meets with your approval.

This Report also includes a statement concerning the Denture Therapists Appeal Board.

Yours very truly,

H K Mackenzie

Hugh K. N. Mackenzie
Chairman

2761-04 (84/07)

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ANNUAL REPORT - 1984

I. INTRODUCTION

This is the ninth report of the Health Disciplines Board to the Minister of Health as required by Section 7(1)[b] of The Health Disciplines Act. The report covers the Board's activities in the calendar year 1984.

The Board acknowledges the administrative and professional support provided by the Health Boards Secretariat and legal counsel during the year.

In August, 1984 Barbara Nichols of Sault Ste. Marie and Stanley V. Green of Chatham retired after faithfully serving the Board for nine years.

Mrs. Nichols and Mr. Green were original members of the Health Disciplines Board and their tenure with the Board has been characterized by their tremendous contribution. Their guidance and experience have been instrumental in establishing the Board's foundation of concern for and protection of the public interest in relation to the self governing health disciplines. Both of these members have distinguished themselves by demonstrating qualities which are particularly suited for public responsibility.

Health Boards Secretariat

Louise Hastings - Registrar
Katie Lyons - Assistant to the Board
Sylvia Ramkissoon - Committee Officer

Legal Counsel

Russell J. Fraser, Q.C.
Ross B. Freeman, Esq.

BOARD MEMBERSHIP

The Board was established by The Health Disciplines Act, 1974, proclaimed on July 14, 1975.

No person may be appointed to the Health Disciplines Board who is employed in the public service of the Province, or who is or has been registered in a health profession.

MEMBERS - 1984

Hugh K. N. Mackenzie, Chairman	Huntsville
Barbara Nichols, Vice-Chairman	Sault Ste. Marie (retired, August, 1984)
Solette N. Gelberg	Guelph
Grant Gilstorf	Mount Forest
Stanley V. Green	Chatham (retired, August, 1984)
Roberta S. McFadden	Toronto (appointed August, 1984)
A. J. "Red" Pianosi	Copper Cliff
Ronald Watson	Scarborough
Sheila Ward	Toronto (appointed Nov., 1984)

FUNCTIONS

The Health Disciplines Act maintains self-governing colleges for the five major health disciplines, namely, dentistry, medicine, nursing, optometry and pharmacy. The Board was created to perform two separate and distinct functions under the Act:

1. **COMPLAINTS**: The Board reviews decisions of the complaints committees of the colleges covered by the Act, when either the complainant or the member complained against is not satisfied with the decision.

2. **REGISTRATIONS**: The Board, if requested, hears or reviews proposed decisions of the registration committees of the colleges covered by the Act where the committees propose to refuse to grant registration or to attach terms, conditions or limitations to a registrant.

PROCEDURES

Complaints:

In conducting a review, the Board examines the actions of a complaints committee to determine three things:

(1) Has the committee conducted a full investigation of the complaint?
(2) Was the decision reasonable in the light of the investigation?
(3) Has it protected the public interest?

The complainant and the respondent have the choice of attending the review in person, being represented by an agent, or submitting written representations. It is, of course, desirable that the complainant and the respondent attend the review in person. It is the Board's practice to request an officer of the college to attend the review to answer any questions the Board may

have about the investigation of the complaint.

A review is held in closed session to protect the privacy of the individuals concerned, except where both the complainant and the respondent specifically request an open review and where the Board considers there is a substantial reason for a public review.

Registration:

An applicant, dissatisfied with a proposed decision of a college registration committee, may apply to the Board for a hearing or a review of that decision.

II. ISSUES AND COMMENTS

CONFIDENTIALITY AND COMMUNICATION WITH PATIENTS' FAMILY MEMBERS

In 1984, the Board conducted a number of reviews which highlighted the delicate and compelling matter of communication with patients' family members. As the Board has continued to observe, a large proportion of cases originate from a failure of communication between the practitioner and the patient. The Board feels that the involvement of family members in the care and treatment of a patient is often an important component of health care. However, such involvement can only be

encouraged by a physician with the consent of the patient.

In 1984, the Board reviewed a case in which the daughter of a psychiatric patient complained that adequate measures were not taken to ensure the patient's safety when he failed to return to the hospital after the expiration of his "day pass". Tragically, the patient had committed suicide and this was not discovered until his daughter went to visit him at the hospital, 18 hours after he was supposed to have returned there.

The Complainant's position was that she should have been informed immediately of her father's failure to return so that she could have assisted hospital staff in locating him. The Board found that as the Complainant's father was a voluntary patient, the physician and hospital staff could not order his return. In addition, a respect for the confidentiality of the patient's treatment had to be observed.

In another case, a patient's estranged husband complained that family members were not made aware of the seriousness of the patient's condition. Although various family members visited the patient on a regular basis, they were not kept apprised of the details of the her condition. In this case, the patient had remained

coherent to the final hours of her life and the Board felt that it was the patient's right to exclude her family from the details of her condition.

Both of these cases pose a complex question for practitioners. The Board does not raise these cases in the annual report to discourage communication with patients' families. The Board believes that a supportive and informed family member can be an important aspect of patient care and indeed, the Board encourages more open communication throughout the health care field. However, communication with family members must take place within the framework of respect for confidentiality, and the Board believes discussion with a patient about family members' involvement may be a recommended course in many instances.

FRIVOLOUS OR VEXATIOUS REQUESTS FOR REVIEW

Section 8(2) of the Health Disciplines Act currently stipulates that the Board shall review decisions of the Complaints Committees of the Colleges if such a review is duly requested by the Complainant or the Respondent. The Board believes that a proposal to give the Board, through legislative changes, the discretion <u>not</u> to conduct a review in special circumstances, would be consistent with the Board's mandate of protection of the

public interest. The parameters of this discretion would have to be clearly identified. In the Board's opinion, discretion should be exercised only in those cases which are deemed, by the Board, to be purely frivolous, trivial or vexatious.

The Board notes, and finds it appropriate, that the Colleges are compelled to investigate every complaint. The results of these investigations reflect an array of complaints ranging widely in magnitude. As the Board provides a check for this self-governing (and therefore self-investigating) process, the Colleges' finding regarding the magnitude of any complaint clearly could not be the Board's measure of whether a complaint were frivolous, trivial or vexatious.

At the present time, a Complainant or Respondent need only to request a review by the Board in order for one to be conducted. There is no obligation to substantiate a need for the review. The Board would not expect the provision of substantiation to be complicated or onerous. The suggestion that a Complaints Committee failed to take seriously a complaint, or that all evidence was not considered, could be adequate. While simply requesting a review, without indicating grounds, initiates the process, it certainly does not contribute to it in any enlightening manner. It is the Board's

position that encouragement to provide reasons for the request for the review would serve the Complainants' interests.

There can be no better example of abuse of the review system than a case which was before the Board in 1984. A consumer complained to the Ontario College of Pharmacists about an expired tube of prescription ointment which was dispensed to her by a pharmacist. Although the Complainant requested a review by the Health Disciplines Board, she admitted before the Board that she was completely satisfied with the steps which the College took to ensure the problem would not recur, as well as the disciplinary measures which were instituted. Members of the Board, from across the Province, travelled to Toronto to review a case which involved only the desire for a refund of the cost of the original tube of medication. This amounted to $9.65.

The Board would encourage changes in the legislation which would give it discretion <u>not</u> to conduct a review when the complaint is deemed by the Board, to be purely frivolous, trivial or vexatious.

INCREASING HEALTH CARE NEEDS OF THE AGED

In 1984, there were number of cases before the Health Disciplines Board which were indicative of a trend created by Ontario's aging population. The cases, although often compelling, were not, in themselves, alarming. However, the Board believes they may bespeak of challenging and difficult times ahead for the elderly and members of the health care profession if the needs of a changing population are not well met.

Questions arose such as what should constitute reasonable access to health care professionals in nursing homes; who has responsibility for placement of a senior requiring continuing, though not acute, care following a hospital stay; and how can the increasing need for psychological, social and medical support in the aged community of a nursing home be addressed?

Most are aware of the aging population of Ontarians; it is also important to reflect and act upon the profound effect which this trend will have on our society. In health care, and specifically, in the five health disciplines, this will doubtless mean increasing education, expertise and specialization in geriatric care.

RELEASE OF THE RECORD

On September 10, 1984, an oral decision was rendered in the matter of Stumbillich in the Ontario Court of Appeal by Thorson J.A., speaking on behalf of himself and Goodman and Houlden JJ.A. Sharon Sparks, the executrix of the estate of her father, Michael Stumbillich, had requested a review of the decision of the Complaints Committee of the College of Physicians and Surgeons of Ontario by the Health Disciplines Board. As a preliminary matter, Mrs. Sparks requested her father's medical records. The Health Disciplines Board declined the request. An application for judicial review of the Board's ruling was made to the Divisional Court and the Board was ordered to release the record.

In the decision of the Court of Appeal, which upheld the decision of the Divisional Court, it was found that to limit the material made available to the Complainant for her use in the proceedings "would unfairly impair the Complainant's ability to follow-up her complaint before the Board in the way in which its own procedure invited her to do." It appeared to the Board that the question of its procedures had figured in the final decision of the Court.

The Board's procedures have, to some extent, evolved and

it is the Board's view that the primary determination in this evolution has been a desire for fairness. The Board was aware that by allowing the Complainant and the Respondent to question each other, it was straying from the strict language of a review under Section 8(2) of the Health Disciplines Act, namely, that a Complainant state the complaint, and the Respondent state the answer to the complaint. However, the Board felt its procedure offered a fair arena for both the Complainant and the Respondent..

The Courts indicated that the Board was conducting "a kind of a hearing" and, as such, the complainant and the respondent had certain rights, even though these rights were not explicitly included in the legislation. However, the Legislature did not prescribe that a review be a trial de novo. In fact, the Act indicates that a review is not a hearing.

The Courts, in finding that the Board was holding "a kind of a hearing", made the Board aware that, in doing so, it was compromising another aspect of its mandate of public interest.

The Legislation provides for third party complaints, or complaints made by a person other than that person who received care. In fact, of the 134 complaint reviews

conducted in 1984, 30 involved third party complainants (approximately 22%). As a result of Stumbillich, in such cases, and under the procedures used by the Board, the Complainants would have been entitled to virtual as-of-right release of the record. A Complainant could have access to the medical records of a patient in whom that Complainant had no interest or, indeed had mixed or negative interests.

Instead of reflecting a greater respect for an individual's right to access to his or her medical records, such a process could result in the restriction, with respect to confidentiality, of an individual's right to control over his or her own records.

In addition to these concerns, the Board was confronted with the question of how to deal with the various pieces of legislation concerning confidentiality.

After consideration of these matters, the Board decided to change its procedures and to move closer to conducting a review as it is envisioned under Section 8(2) of the Health Disciplines Act.

In doing so, the Board believes it can maintain its discretion with regard to release of the record, with due consideration to fairness as highlighted by the

Stumbillich decision, and protect the confidentiality of records involved in third party complaints. (A copy of the Board's new procedures can be found as an appendix.)

PHYSICIANS' "NON-MEDICAL" RESPONSIBILITIES

The Board noted in 1984 that there were a few cases in which a physician's non-medical conduct was questioned. The Board has perceived amongst Complainants, as far as they can be representative of the public, an increasing desire for accountability of practitioners to their patients. This is reflected, in part, in these cases concerning "non-medical" responsibilities.

The Board reviewed a complaint in which a hospital administrator, who was also a physician, was alleged to have misled a patient's mother regarding the administration of penicillin. While the administrator had not treated the patient, he had dealt with the patient's family with regard to hospital procedures. In another case, the Board reviewed a complaint in which it was alleged that a physician had unfairly used his hospital privileges to pressure another physician into altering a partnership agreement. In both cases, the Board found that complaints of this nature were properly before it even though they did not deal with medical treatment rendered to a patient.

The Board received a complaint in 1984 which involved the conduct of two physicians who, at a public meeting, made outspoken remarks involving medical evidence concerning homosexuals. The Board wrote in its decision:

> "While physicians have the right to present personal views in any forum, they should reflect on how those views are weighed as a result of their profession. (Both doctors) may have been presenting their views as private citizens, however, as they spoke on medical issues, these views perhaps carried more weight than the views of private citizens not within the medical profession. The Board believes this is a responsibility which must be accepted by physicians."

These final lines of this decision basically summarize the Board's position on physicians' responsibilities in "non-medical" conduct.

III. STATISTICS (Tables I - VII)

In 1984, the Board met on 111 days, and conducted 129 complaint reviews, 35 registration reviews and eight registration hearings. The Board issued a total of 184 decisions. The number of cases outstanding at December 31, 1984 was 33.

Table I

HEALTH DISCIPLINES BOARD

Total Complaints Reviewed by Health Disciplines Board

College of Physicians and Surgeons of Ontario (CPSO)	94
Royal College of Dental Surgeons of Ontario (RCDS)	32
College of Nurses of Ontario (CNO)	6
Ontario College of Pharmacists (OCP)	1
College of Optometrists of Ontario (Opt.)	1
Total	134

Table II

Total Decisions Issued in Complaint Reviews

College of Physicians and Surgeons of Ontario (CPSO)	88
Royal College of Dental Surgeons of Ontario (RCDS)	31
College of Nurses of Ontario (CNO)	5
Ontario College of Pharmacists (OCP)	2
College of Optometrists of Ontario (Opt.)	1
Total	127

Note: The discrepancy in the total in **TABLE I** and the total in **TABLE II** is a reflection of the fact that some Complaints are received in the previous year which are reviewed in January of the next year. Similarly, some complaints are reviewed in December and the decisions are not issued until January.

Table III

HEALTH DISCIPLINES BOARD

Disposition of Complaint Reviews
(for which decisions were issued in 1984)

College	Confirm	Refer to Discipline	Admonish	Investigation	Recommendation	Total
CPSO	81	2(3)*	1	2	2	88
RCDS	24	2	1	-	4	31
CNO	4	-	-	-	1	5
OCP	2	-	-	-	-	2
Opt.	1	-	-	-	-	1
Total	112	4(5)*	2	2	7	127

* In one case, in which there were 3 respondent doctors, the decision was confirmed with regard to 2 respondents, while 1 respondent was referred to the Discipline Committee.

Table IV

Total Decisions Issued in Registration Reviews and Hearings

College	Hearing	Review	Total
CPSO	3	9	12
RCDS	1	-	1
CNO	2	28	30
OCP	-	-	-
Opt.	-	-	-
	6	37	43

Table V

Disposition of Registration Reviews and Hearings
(for which decisions were issued in 1984)

College	Confirm	Further Consideration	Registration Required	Total
CPSO	8	4	-	12
RCDS	1	-	-	1
CNO	29	1	-	30
OCP	-	-	-	-
Opt.	-	-	-	-
	38	5	-	43

Table VI

Total Complaint and Registration Cases Reivewed/Heard

College	Complaints	Registration	Total
CPSO	88	12	100
RCDS	31	1	32
CNO	5	30	35
OCP	2	-	2
Opt.	1	-	1
	127	43	170

Table VII

Total Disposition of Complaint and Registration Cases Reviewed/Heard
(for which decisions were issued in 1984)

College	Confirmed	Other *	Total
CPSO	89	11	100
RCDS	25	7	32
CNO	33	2	35
OCP	2	-	2
Opt.	1	-	1
	150	20	170

* includes referral to Discipline Committee, Admonishments, referral for further investigation, and comments or recommendations.

DENTURE THERAPISTS APPEAL BOARD

The Denture Therapists Appeal Board was established by the Denture Therapists Act, 1974, which was proclaimed on July 14, 1975.

The membership of the Denture Therapists Appeal Board is identical to that of the Health Disciplines Board.

The Board conducted three complaint reviews during 1984; it returned two decisions to the Complaints Committee and required the Committee to refer the practitioners to the Discipline Committee. The other decision was confirmed.

No complaints were outstanding at December 31, 1983.

No requests for registration reviews or hearings were received during 1984.

Appendix A

THE HEALTH DISCIPLINES BOARD

GUIDE TO THE PROCEDURE ON A COMPLAINT REVIEW UNDER SECTION 8(2) OF THE HEALTH DISCIPLINES BOARD

Prior to the commencement of a review, Board members are provided with, and have had the opportunity to examine all the material which the Complaints Committee had before it in reaching its decision. The Board members also have copies of the correspondence from the complainant requesting a review, and copies of the correspondence with the College.

The Board normally conducts a complaint review in private session (in camera). However, the Board has the discretion to hold a review in public, and may do so upon the application by the complainant, the member or on its own initiative.

The complainant and the member complained against are entitled to attend the review, and may state their complaint and answer either personally, by agent (a lawyer or friend) or in writing. However, they are not required, nor can the Board compel them to attend.

The Board requests that a representative of the College

be present at answer questions from the Board concerning the investigation conducted by the Complaints Committee.

Neither the complainant or the member are sworn and no stenographic record or transcript is taken.

1. The complainant will be asked to state his or her complaint to the Board.

2. The member will be asked to state his or her answer to the complaint.

3. Members of the Board may wish to ask the complainant and/or the member some questions to clarify the complaint and/or the answer.

The Board may allow the complainant to make a final statement concerning his or her complaint and the member to make a final statement concerning his or her answer to clarify any matters that may arise from questions asked by the Board.